



Crl.A(MD)No.243 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.243 of 2016

Murugan

... Appellant/A1

vs.

The State Represented by
The Inspector of Police,
Peraiyur Police Station,
Madurai District.

In Crime No.17 of 2003

...Respondent/Respondent

PRAYER : This Criminal Appeal has been filed under Section 374 of Cr.P.C., to call for the records in C.C.No.223 of 2006 relating to the Judgment dated 20.06.2016 passed by the learned II Additional NDPS Act Cases, Madurai and to set aside the Judgment of the conviction on the appellant/A1.

For Appellant : Mr.S.Muniyandi

For Respondent : Mr.T.Senthilkumar
Additional Public Prosecutor



JUDGMENT

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This Criminal Appeal has been preferred as against the Judgment of Conviction passed in C.C.No.223 of 2006 by the learned II Additional NDPS Act Cases, Madurai, dated 20.06.2016 and thereby, convicted the appellant for the offence under Section 8(c) r/w 20(b)(ii)(B) of NDPS Act.

2. The case of the prosecution is that on 22.03.2003, when the defacto complainant was working as Inspector of Police in Sedapatti Police Station, received a secret information that the accused are coming with Ganja in a motorcycle. Therefore, the respondent and his team went to the scene of crime and found the second accused along with the contraband weighing 10 kgs of Ganja. After seeing the police party, the first accused fled away from the scene of crime leaving a gunny bag. The gunny bag consisting 15 kgs of Ganja, which was left out by the first accused. Both the bags were recovered by the respondent by supporting seizure mahazar and after taking two samples weighing 50 grams each from the gunny bag, sealed the remaining contraband and thereafter, registered the FIR in Crime No.17 of 2003 for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act. After completion of investigation, the



respondent police filed a final report and the same has been taken cognizance by the trial Court in C.C.No.223 of 2006. The second accused has not appeared before the trial Court and the case has been split up by the trial Court as against the second accused in C.C.No.154 of 2016. Insofar as the trial in C.C.No.223 of 2006 is concerned, it was proceeded as against the first accused.

3. In order to prove the charge, the prosecution had examined P.W. 1 to P.W.4 and marked Ex.P.1 to Ex.P.13. The prosecution has produced material objects as M.O.1 to M.O.6. On the side of the accused, no one was examined and no documents were marked.

4. On perusal of the oral and documentary evidence, the trial Court found the appellant guilty for the offence under Section 8(c) r/w 20(b)(ii) (B) of NDPS Act and sentenced him to undergo 5 years Rigorous Imprisonment and imposed to pay a fine of Rs.20,000/- in default to undergo 6 months Simple Imprisonment. Aggrieved by the same, the present appeal.

5. The learned counsel for the appellant would submit that the second accused was acquitted by the trial Court by Judgment, dated



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30.11.2018. The appellant was convicted by the same trial Court with the same evidence on record. He would further submit that the respondent has failed to follow the mandatory provisions under Section 50(1) and 42(2) and 57 of NDPS Act. Even according to the case of the prosecution, the appellant was fled away from the scene of crime and even then, there was separate seizure mahazar. If the first accused was in possession of 15 kgs of Ganja, except confession statement from the second accused, no other material produced by the prosecution to prove that the first accused was present in the scene of crime and he was possessed 15 kgs of Ganja. Further, the seizure mahazar which was marked as Ex.P.2 and Ex.P.3 did not contain the signature of the second accused, which was allegedly seized from the second accused. It was categorically admitted by P.W.1. Even then, the trial Court without considering those grounds, has mechanically convicted the appellant.

6. Per contra, the learned Additional Public Prosecutor would submit that in order to bring the charges to prove the prosecution, had examined P.W.1 to P.W.4 and marked Ex.P1 to Ex.P.13. They also produced material objects as M.O.1 to M.O.6. The confession statement of the second accused is very clear that the first accused was also with him and he was in possession of contraband weighing 15 kgs of Ganja.



After seeing the police party, he fled away from the scene of crime leaving the contraband with A2. Pursuant to the said confession, there was recovery of contraband weighing 15 kgs of Ganja. Therefore, the prosecution has proved the case beyond any doubt and the trial Court has rightly convicted the appellant and it does not warrant any interference by this Court.

7. Heard the learned counsel on either side and perused the materials available on record.

8. Even according to the case of the prosecution, on receipt of secret information, the respondent and his team went for surveillance near Chinnakalai's Sugarcane field, Kurukkampatti Village, both the accused were standing there with two gunny bags of contraband. After seeing the police party, the first accused, namely, the appellant herein fled away from the scene of crime after leaving the contraband. The second accused was found in possession of 10 kgs of Ganja and under the seizure mahazar Ex.P.2 and Ex.P.3, both the gunny bags were seized from the second accused. After receipt of secret information, the respondent ought to have forwarded the same to the Immediate Superior get necessary permission as contemplated under Section 42(2) of the



NDPS Act. The prosecution has failed to send the information to the Superior Officer in order to get any permission to conduct raid. Therefore, this contravention is fatal to the case of the prosecution. On perusal of Ex.P.2 and Ex.P.3 allegedly seized contraband from the second accused, they do not contain the signature of the second accused. It contains the signature of only the respondent and other two constables. Therefore, the seizure mahazar are concocted one in order to foist a false case as against the accused persons. The Investigation Officer was examined as P.W.3 and he categorically deposed that after completion of registering the FIR, he failed to send report to the higher officials as contemplated under Section 57 of the NDPS Act. Further, the Police Officer, who had arrested and recovered the alleged contraband from the accused was examined as P.W.1. He deposed as follows:

“2ம் எதிரியிடம் ஒப்புதல் வாக்குமூலம் வாங்கினோமா என்றால் ஞாபகம் இல்லை. எல்லா ஆவணங்களையும் யார் எழுதினார்கள் என்பது பற்றி எனக்கு ஞாபகமில்லை. சோதனை சம்மதக் கடிதத்தில் எங்கள் கையெழுத்துக்கு கீழ் தேதி இல்லை என்றால் சரி தான். சோதனை அறிவிப்பில் எதிரியின் வயது, மற்றும் முகவரி குறிப்பிடப்பட்டுள்ளது என்றால் சரி தான். பிரிவு 50-ஐ சரியாக கையாளாமல் சோதனை சம்மதக்



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கடித்தினை தயார் செய்துள்ளோம் என்றால் சரியல்ல. கைது நமுனாவில் நேரம் திருத்தப்பட்டுள்ளது என்றால் சரி தான். கைது நமுனாவில் காவல் ஆ சார்பு ஆய்வாளர் என்று எழுதி ஆய்வாளர் என்று திருத்தப்பட்டுள்ளது என்றால் சரியல்ல. சோதனை சம்மதக் கடித்திலும், கைது நமுனாவிலும்/2வது எதிரியின் தந்தையின் பெயர் திருத்தப்பட்டுள்ளது என்றால் சரி தான்...□

Therefore, Ex.P.2 and Ex.P.3 cannot be believable one and in fact, it does not contain the signature of the second accused from whom the contraband was seized. Further, there was delay in sending the contraband to the Court. According to the prosecution, the contraband was recovered on 22.03.2003 and the same was sent to the trial Court only on 20.06.2003. The delay was not properly explained by the prosecution and it raised a reasonable doubt over the prosecution case. Therefore, the prosecution failed to prove the case beyond any doubt and the conviction as against the appellant cannot be sustained.

9. Accordingly, the Judgment of Conviction passed in C.C.No.223 of 2006 by the learned II Additional NDPS Act Cases, Madurai, dated 20.06.2016, is hereby set aside and this Criminal Appeal is allowed. The



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appellant/accused is acquitted. Bail bond if any executed by the appellant/accused shall stand cancelled and a fine amount if paid is ordered to be refunded to the appellant/accused forthwith.

22.06.2023

sjj

NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1.The II Additional NDPS Act Cases,
Madurai.

2.The Inspector of Police,
Peraiyur Police Station,
Madurai District.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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